MISCELLANY.

Wills—Soldiers' and Sailors.'—The mobilization of the National Guard for service on the Mexican border, states E. S. Oakes in the August Case and Comment, invests the subject of soldiers' and sailors' wills with more than usual interest and importance. The imminent dangers, the diseases, disasters, and sudden death constantly besetting soldiers and sailors, the utter inability oftentimes to find the time or means to make a deliberate and written testamentary dis position of their effects, have very generally led to the making of an exception in their favor, under certain circumstances, from the statutory requirements for the making of a valid will. Such circumstances being present, no particular formalities are necessary, though there must be clear and satisfactory evidence of testamentary capacity and the animus testandi. The very essence of the privilege consists in the absence of all ceremonies as legal requisites. Such a will may be established by the testimony of only one witness. A minor is entitled to the benefit of the privilege. It extends to all members of the service, irrespective of rank or the nature of the duty to which they may be assigned.

A soldier's or seaman's will may be contained in a letter the larger portion of which is not testamentary; and though the writer expresses an intention of making a formal will.

There is some authority to the effect that an informal will made while in active military service, unless revoked, continues in force during the testator's lifetime.

A soldier who is well advised will, however, execute a will with the usual formalities, and cause it to be deposited in a place of safety, rather than rely on the privilege accorded to him by law.

International Law—Blockades—Violation of Declaration of London.—It is a question whether there will be anything left of international law after the end of this war. All parties to it seem willing to recur to

> "The good old way, the simple plan,
> That those shall take who have the power,
> And those shall keep who can."

as it suits their convenience. If these reversions to barbarism affected only the parties to the war, neutrals might view with more or less composure the blood-letting now going on in Europe. But such is not the case. If international law can be suspended by a belligerent whom it incommodes, it ceases to exist, and the nations now happily exempt from the direct, but not the indirect, effects of war can not accept the new doctrine now put forth openly by at least one nation and not unfavorably received by others, that, if a na-

tion is "fighting for its life" it is at liberty to violate every rule of international law, of its own law and of common humanity, in the preservation of its life. One is reminded, in spite of ones self, of the dialogue between the French criminal, caught redhanded, and the magistrate: The criminal—"But, Judge, one must live." The Judge—"In your case I do not see the necessity."

There is no question of the violation of practically every rule of international law by one or the other of the nations now at war. No good end would be served by attempting to distribute the blame, but it is impossible to put out of view the fact that the Central powers forever disabled themselves from claiming the benefit of international law by their attack on Belgium. That act, aside from its gross wrong to the people of Belgium, constituted such an unfair method of attack on France, and, through France, on her allies, as would justify those powers, if reproached by the Central Powers with any violation of international law, in retorting: "What right have you to claim the shelter of those laws?" But the violation by Germany and Austria of the solemn pact of the former power to respect Belgium's neutrality, and of the rule of international law that a belligerent may not use the territory of a neutral for the purpose of launching an attack against its enemy, does not justify the interference of the Allies with the commerce of neutrals, in violation of the accepted rules of international law, for the purpose of hampering the activities and destroying the strength of the adversary. Has that been done?

The Declaration of London, which, it was hoped, would be a sort of Magna Charta for the law of warfare by sea, was adopted in 1909. By that instrument it was provided:

Article 1. A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

Article 2. In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy's coast line.

Article 3. The question whether a blockade is effective is a question of fact.

Article 4. A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

Article 9. A declaration of blockade specifies (1) the date when the blockade begins, (2) the geographical limits of the coast line under blockade, (3) the period within which neutral vessels may come out.

Article 12. The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

Article 16. If a vessel approaching a blockaded port has no knowl-

edge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of the ships of the blockading force.

Article 17. Neutral vessels may not be captured for breach of blockade, except within the area of operations of the warships detailed to render the blockade effective.

Article 18. The blockading forces must not bar assess to neutral ports or coasts.

Article 19. Whatever may be the ultimate destination of a vessel or her cargo, she cannot be captured for breach of blockade if, at the moment, she is on her way to a non-blockaded port.

Article 35. Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

Other articles which have more or less bearing on the question of the justifiability of the acts of the two contending alliances may be summarized briefly as follows: Art. 48 provides against the destruction of a neutral vessel unless (Art. 49) sending the vessel to the captor's port would involve danger to the safety of the warship or to the success of the operations in which she is engaged. Art. 50 provides for the "placing in safety" of all persons on board a captured vessel, before it is destroyed. Art. 51 provides that the captor of a neutral vessel who has destroyed it, must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Article 49, and on his failure to do so, compensation must be made.

In view of current events there seems something sardonic in the provisions of Article 66 that "The signatory powers undertake to insure the mutual observance of the rules contained in the present declaration in any war in which all the belligerents are parties thereto."

For the most part, and all parts which are vitally necessary to a determination of the legality of the operations of the two warring alliances, these provisions are a mere formulation of the previously existing rules of international law, with reference to traffic by sea between neutrals and between a neutral and a belligerent. The chief offenses against the right of neutrals consist in the interruption by England, not only of commerce with Germany, but of commerce with neutral countries, by a long-distance blockade, and of the attempted stoppage by Germany, by means of its submarines, of all traffic with England.

Enormous quantities of goods originating in this country and consigned to neutral ports have been taken over by England from neutral vessels which she compelled to enter her ports, instead of searching them at sea, to ascertain if either the vessel or the cargo was subject to capture, which is the limit of the rights of a belligerent.

She has asserted the right to intercept and detain all shipments to neutral countries which there is any reason to believe are intended for reshipment to the enemy, and she has gone so far as to tell these countries how much of food and other articles which they have been purchasing abroad, and especially in this country, they may receive, and exact pledges from the governments of those countries against the re-shipment of imports or the export of a corresponding quantity of native products to the belligerent countries. This amounts to nothing more than the assertion of the good old English doctrine that England is the Mistress of the Seas and that all nations use it subject to her dictation, a doctrine which we thought we had put at rest a century ago by the treaty of Amiens.

In order to carry out this policy, England has had to maintain a virtual blockade of the ports of Holland, Denmark, Norway and Sweden—if overhauling vessels bound to or from their ports a thousand miles from land and running them into her ports can be called a blockade. And this brings up the second question, as to whether under international law a blockade is legal which does not place a single vessel within two hundred miles of the blockaded ports and coasts but bottles up, with more or less success, two narrow seas through which access must be had from over-sea countries to the enemy of the blockading country.

It is obvious at the first glance that no such form of blockade was contemplated by the Declaration of London or was theretofore known to international law. During the period wherein the law of blockade was formulated there were no submarines, or mines and the range of a cannon was no more than a marine league. To blockade a port, therefore, required nothing more than the stationing of a sufficient naval force three or four miles off the coast, in which event a blockade runner could not get past except by great good luck on a dark and tempestuous night. The maintenance of such a blockade at the present time, with the frightful defensive weapons now at the command of the blockaded—the mine, anchored or floating, the submarine, the aeroplane and the dirigible—is out of the question. Unless England had adopted the plan of blockade which she did adopt, there would be no blockade, except of the kind illustrated by the catastrophe of the Lusitania and other English and neutral ships.

Justified in her own imagination by a consideration of the unfair advantage which Germany had secured by her invasion of Belgium, England proceeded to establish a long-distance blockade, which means nothing more or less than stopping all vessels going to Germany, or bound for other countries with cargoes which are supposed to be intended for Germany, wherever they may be found. This is clearly in violation of the several articles of the Declaration above cited and of the previously existing law of blockade. The fact that,

on the whole our European trade has been larger than it was before, has nothing to do with the legality or illegality of England's acts.

Even more lawless has been the conduct of Germany. Of course she has not maintained a blockade of English ports, for the mere appearance of a periscope off one of them would loose a fleet of patrol boats and torpedo boats. Her submarines have simply cruised around the British Isles and down the French coast, to say nothing of infesting the Mediterranean, destroying any vessel which might be made a lawful prize and probably many which could not be brought within that class. In fact, so far as one can tell from the particulars which get into the newspapers, it would seem that any vessel going to or coming from a port of the Allies is marked for destruction. It may be paid for after the war, perhaps; but what is that compared to the military value of discouraging trade with the enemy?

The whole law of blockade has been disrupted by the acts of the most powerful of the belligerents. It was time that this should be done, but not by violence. There is no reason why a belligerent should be compelled to confine its activities to certain ports or stretches of the cost of an enemy, from which it wishes to shut off supplies, when, by scattering its fleets, it can intercept all traffic with that country. In other words, a capture on the high seas, which stops the enemy from getting goods intended for it, should be just as valid as a capture of the same goods just in front of the port which the vessel attempts to make. But the acts of the warring powers in this respect constitute a clear violation of international law as it existed on August 1, 1914.—Nat. Corp. Rep.

CORRESPONDENCE.

December 1st, 1916.

To the Editor of the Virginia Law Register:

In commenting editorially in the December Register on the case of the United Cigarette Machine Company *v.* Brown, decided at the September Term of the Supreme Court of Appeals, you assume that the facts on which the opinion is predicated are true, and accordingly conclude that the appellee, Brown, "went for wool and was properly shorn." But as the Court appears to have considered the case solely on the demurrer to the cross bill, the facts assumed as true in the opinion represent nothing more than the appellant's statement of its claims and cannot be taken as the basis of a judgment either on the merits of the claims themselves, or on Brown's legal or moral obligation to pay them. These questions are yet to be determined when the case comes again before the lower court. It is premature, therefore, to pass judgment on Brown, and it remains to be seen whether, in the final determination of the case, he is to get wool, or be shorn.